



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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November 24, 2009

TECHNICAL STAFF REPORT

Petition Accepted on October 2, 2009

Planning Board Meeting of December 10, 2009 (Advisory Authority Rules)

Zoning Board Hearing to be scheduled

Case No./Petitioners: ZB 1084M – Forest Venture II, LLC

Location: Second Election District
South side of US 40 approximately 900 feet east of Centennial Lane/Bethany Lane; Tax Map 24, Grid 2, Parcel 1172; 10011 US 40 (Baltimore National Pike) (the "Property" or "Site").

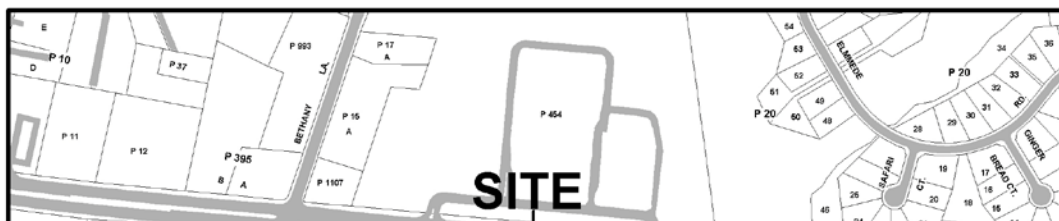
Area of Site: 1.37 acres

Current Zoning of Site: R-20 (Residential: Single)

Proposed Zoning of Site: B-1 (Business: Local)

Department of Planning and Zoning Recommendation:

APPROVAL

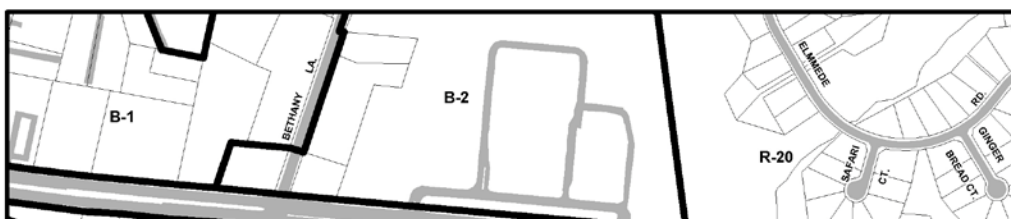


I. DESCRIPTION OF PROPOSAL

- **The Petitioner requests a Zoning Map Amendment to rezone the Property from the current R-20 (Residential: Single) District to the B-1 (Business: Local) District.**
- **This Zoning Map Amendment request is made under the Section 100.G.2. regulations for cases with site plan documentation. The proposed documented site plan is entitled “Zoning Map Amendment Plan for Property of Forest Motel, Inc.” (the “Documented Site Plan” or “DSP”).**

The Property is currently a wooded, unimproved parcel. The proposed development scenario for the Property is depicted on the submitted plan entitled Zoning Map Amendment Plan for Property of Forest Motel, Inc. (the “Documented Site Plan” or “DSP”). The DSP depicts Building A, a two-story structure comprising 3,500 square feet of retail space on the first floor and 1,500 square feet of residential space on the second floor. This building would be situated 59 feet from the east property line and 86 feet from the US 40 right-of-way and would be 34 feet high. A right-in/right-out access drive is proposed to be located approximately 25 feet from the west property corner. Twenty parking spaces and a dumpster pad are depicted on the west side of the building. A sidewalk is proposed to run adjacent to the pull-in parking spaces. A portion of the existing woods would remain along the south and east sides of the Property. This woods line is depicted on the DSP as being approximately 22 feet wide along the east side of the Site and approximately 60 feet wide along the south side.

The Supplement to the Petition states that the Site is part of an assemblage of properties intended to be developed as a mixed-use project consisting of retail, office and residential uses to be known as Forest Mills. This development on the Property together with the redevelopment of adjacent parcels 69, 72, 497 and 453 will include demolition of the Forest Motel and Forest Diner, and two houses fronting on Frederick Road. The petition also includes a multiple-page document entitled “Forest Green” which is presumed to be a conceptual plan for the Forest Mills DSP.



The petition states that the development of the assembled properties will reduce what is now essentially open frontage on Route 40 to two channelized entries, one of which will be the existing entry to the remaining Double T Diner and the Stavlas Route 40 Business Park which fronts on Frederick Road. As depicted on the Illustrative Site Plan for Forest Green, the access drive on the Property would serve as the only access from US 40 for the Forest Mills (Forest Green) development. An internal drive aisle would provide access to the Double T Diner site and the second access point to the Forest Mills development would be from Frederick Road.

- **The Site Analysis Data Chart shown on the DSP indicates that 20 parking spaces are required and 20 spaces have been provided on the Site.**

Based on 3,500 square feet of proposed retail space and five required parking spaces per 1,000 square feet, 18 spaces would be required. Based on one residential unit, two parking spaces would be required for a total of 20 spaces.

- **The request for a Zoning Map Amendment includes allegations of substantial change in the character of the neighborhood (“Change”) as well as a mistake in the current zoning (“Mistake”) as the rationale to support the proposed B-1 District for the Property.**

II. BACKGROUND INFORMATION

A. Site Description

- The trapezoid-shaped Property comprises 1.37 acres with approximately 200 feet of frontage on US 40. The Site is currently undeveloped, and is predominately wooded. The topography is lowest in the northeast corner (el. 370). The elevation rises slightly across the Property frontage to about 380 at the northwest corner. It rises toward the rear of the Site and becomes steeper along the eastern edge from el. 370 in the northeast corner to el. 400 near the center of the eastern edge and rising to el. 416 at the southeast corner.



II. BACKGROUND INFORMATION (Cont.)

B. Vicinal Properties

- Adjacent properties to the east are zoned R-20. Adjacent properties to the west are zoned B-2.
- Properties to the north across US 40 are zoned B-2 and are improved with a retail/business center.
- Properties south of Frederick Road are zoned R-20 and are generally improved with single family detached dwellings.

C. Roads

- US 40 has two eastbound lanes and shoulders within a 150 foot right-of-way along the Property frontage. A guardrail is located along a portion of the eastern Site frontage.
- Visibility from the proposed driveway entrance appears to be acceptable, with estimated sight distance of more than 500 feet to the east and west. Precise sight distance measurements may only be determined through a detailed sight distance analysis, however. The State Highway Administration had no objections to the proposal provided the Petitioner complies with the conditions required for an access permit.
- According to data from the State Highway Administration, the traffic volume on US 40 east of Centennial Lane was 32,866 ADT (average daily trips) as of May, 2006.

D. Water and Sewer Service

- The subject Property is within the Metropolitan District and is within the Existing and Under Construction Service Area according to the Howard County Geographic Information System maps as of November, 2009. The Site will be served by public water and sewer facilities.

E. General Plan

- The Property is designated Residential/Redevelopment Corridor Areas on the Policies Map 2000-2020 of the 2000 General Plan.
- US 40 is depicted as an Intermediate Arterial/Transit HOV Corridor on the Transportation Map 2000-2020 of the 2000 General Plan.

F. Agency Comments

See attached comments on the proposal from the following agencies:

1. State Highway Administration
2. Division of Land Development
3. Department of Fire and Rescue Services
4. Division of Comprehensive and Community Planning

The following agencies had no objections to the proposal:

1. Bureau of Environmental Health
 2. Department of Inspections, Licenses and Permits
- G. Subdivision Review Committee
- As required by Section 100.G.2.c. of the Zoning Regulations, the site plan documentation included with this petition was evaluated by the Subdivision Review Committee. Subsequent to this evaluation, on October 29, 2009, the Department of Planning and Zoning certified that the development shown on the proposed site plan has the potential to comply with all technical requirements of the reviewing agencies, without substantial changes to the plan, in subsequent subdivision and site development plan stages of review.
- H. Adequate Public Facilities Ordinance
- The petition is subject to the Adequate Public Facilities Ordinance. A site development plan for the proposed development is subject to the requirement to pass the test for adequate road facilities.

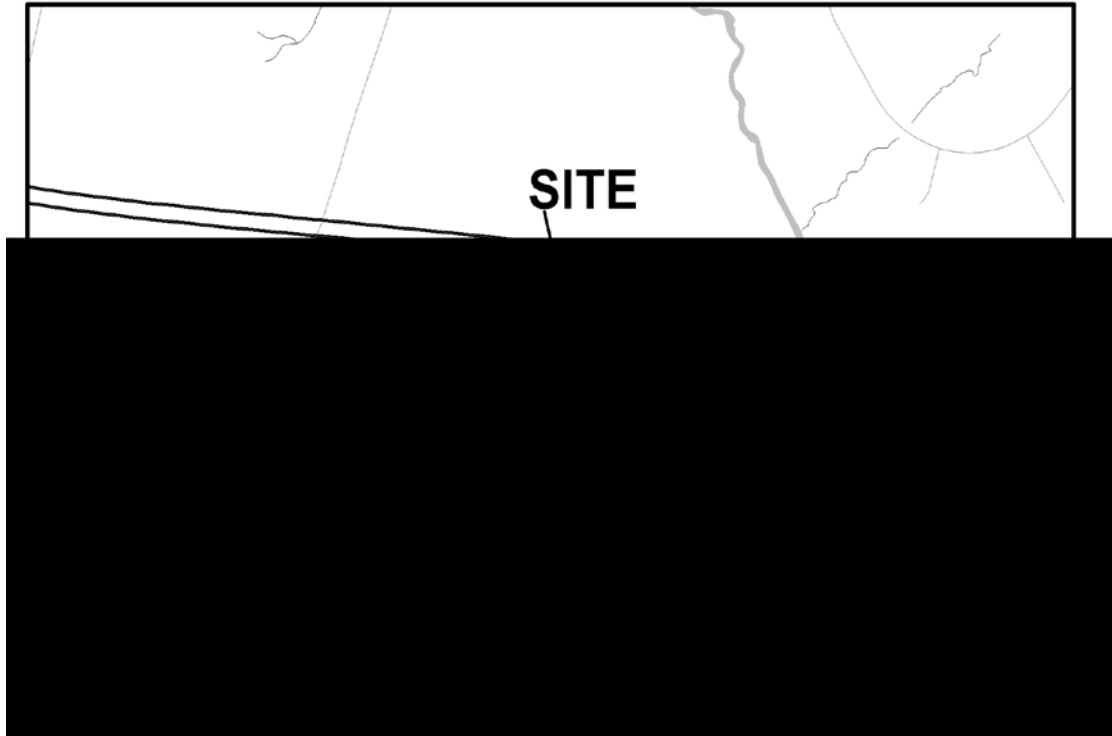
III. ZONING HISTORY

- A. Subject Property and Vicinal Properties
- With the adoption of the first County Zoning Regulations in 1948, the Site was zoned Residential.
 - The 1954 Zoning Regulations and Map designated the Site as R (Residential). Properties to the west to Centennial Lane were zoned B-2 and properties to the east were zoned R.
 - With the 1961 Zoning Regulations, the Site became zoned R-20 and the zoning for properties to the west and east retained the same zoning as in 1954.
 - The Site retained the R-20 zoning in the 1977, 1985, 1993 and 2004 Comprehensive Zoning Plans. Properties to the west to Centennial Lane remained zoned B-2 in these same Comprehensive Zoning Plans.

IV. EVALUATIONS AND CONCLUSIONS

- A. Evaluation of the Petition Concerning the Change Rule
- **The neighborhood boundaries that are relevant to this Zoning Map Amendment request, as proposed by the Department of Planning and Zoning (DPZ) are depicted on Page 6 of this Technical Staff Report. The DPZ agrees with the Petitioner's defined neighborhood except for the eastern boundary. The DPZ believes the neighborhood should extend to the eastern boundary of the adjoining Oak Lea Court subdivision, a logical geographical boundary.**

The Petitioner defined the neighborhood boundary as the area south of Route 40, east of Centennial Lane, north of Frederick Road and west of the forested area west of Oak Lea Court.



- The petition states, “There is about to be a dramatic change to the character of the neighborhood in which the subject property is located”. As part of the Forest Mills plan, existing structures will be razed in order to accommodate the construction of a new mixed-use development which includes retail, offices and residential uses on the same site. The access points to these properties and the Property will also change to help facilitate vibrancy. Once Forest Mills is complete, the character of the neighborhood will change substantially from a hodge-podge mix of commercial pods and isolated residential structures to a new mixed-use development. The change in access from open frontage to two channelized entry points will provide an aesthetic quality to the area that will set it apart as something unique on Route 40. These anticipated changes constitute a change to the character of the neighborhood.
- The petition states, “Projects that are ‘reasonably probable of fruition in the foreseeable future’ are entitled to be considered as changes to the character of the neighborhood”. The replacement of residential structures and use of a commercially-zoned property with a new commercial use may also constitute a change.

An indication of change in the character of a neighborhood can sometimes be found in other cases in the neighborhood for which piecemeal rezoning has been approved; however, there have been no other piecemeal rezoning cases approved within the neighborhood boundary of this case.

The Petitioner contends that changes in the character of a neighborhood should not be limited to piecemeal rezonings/reclassifications, but that potential land uses anticipated for development can be considered as a basis for establishing change.

Although the petition indicates there is about to be a dramatic change to the character of the neighborhood as a result of the Forest Mills development, the existing zoning of the adjoining properties which are to be the larger part of the proposed development is B-2. The uses proposed for these parcels are permitted as a matter of right and the zoning of these parcels does not have to be changed to accomplish the proposed development.

Given the long-standing commercial zoning and commercial uses of the adjacent parcels which would be part of the Forest Mills development, the replacement of an outdated one-story motel and a diner with a mix of permitted uses would change the visual appearance of the site, but would essentially constitute a modernization and intensification of uses. The petition also notes that the replacement of residential structures and use of a commercially-zoned property with a new commercial use may also constitute a change. The residential structures referenced in the petition and located on B-2 zoned property are oriented toward Frederick Road rather than US 40 and this particular area along Frederick Road is more commercial than residential in character. The replacement of these particular residential structures with commercial uses would not result in a substantial change in the character of the neighborhood. The Department of Planning and Zoning finds that there is no evidence of change in the character of the neighborhood.

B. Evaluation of the Petition Concerning the Mistake Rule

- **The Petitioner alleges that the current R-20 zoning for the Property is a mistake and the justification given for this allegation is that fundamental mistakes were made during the 2003 Comprehensive Zoning. There was a failure to recognize that the subject property is an isolated small residential property fronting on, and with access to Route 40, a condition substantially different from other residential properties in the area. There was also a failure to recognize that the property could and would be jointly developed as part of an assemblage which provides a significant opportunity to develop a mixed-use activity center, as well as streetscapes and significant improvements to Route 40.**

The Petitioner alleges that the Zoning Authority did not know at the time of the 2003 Comprehensive Zoning that this could occur and its assumption that the property would not be jointly developed has proven untrue with the passage of time. As with change, the Zoning Board was unaware that the Forest Motel would be closed, the Forest Diner removed, two houses torn down, access reduced and channelized, and that a mixed-use center would be built.

- **In answer to the petition section concerning whether the Property can be used in its present zoning classification, it appears that rather than specifically address this issue in the petition, Section II (page 6) of the Supplement, Change in the Character of the Neighborhood, states that the R-20 zoning is at odds with anticipated changes in the neighborhood and that given the location of the Property which is not**

separated from the Forest Mills development either by mature trees or topography, the current zoning is simply inappropriate.

There was no specific proposal to rezone the Property in the 2004 Comprehensive Zoning Plan (“CZP”) and there is no evidence as to whether the County Council ever considered a rezoning in the CZP. The Petitioner’s lack of a proposal to rezone the Site suggests little likelihood that the joint development of the Site was anticipated at the time of the CZP. The Petitioner notes that the Zoning Board was unaware that the Forest Motel would be closed, the Forest Diner removed, two houses torn down, access reduced and channelized, and that a mixed-use center would be built; however, these site improvements are the Petitioner’s choice and not necessarily an indication of a failure of the County Council to recognize potential future site changes and rezone the Site.

The DPZ would support a finding of mistake not for the reasons cited by the Petitioner, but on the basis that the direct access to US 40 which is an atypical condition for most residentially-zoned properties in the Route 40 corridor causes the Property to be unsuitable for the uses permitted under the current R-20 zoning and renders it more logical to be developed as part of a larger assemblage of business-zoned parcels. The Property is oriented toward US 40 while adjoining residentially-zoned properties are oriented toward Frederick Road. The Property is visually and topographically isolated from adjoining residential properties, a unique condition of the Property. The DPZ believes that if the property had been studied in-depth during the last CZP, it would have been rezoned to B-1; therefore, there is justification for a finding of Mistake.

C. Relation to the General Plan

- **A Zoning Map Amendment to rezone the Property to B-1 would not be inconsistent with the business zoning to the west and the residential zoning to the east.**
- **Incorporating the proposed development of the Property into the neighborhood based on a rezoning to B-1 and in conjunction with the larger proposed development would be in character with the Route 40 corridor.**

D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d.

1. The development scenario proposed with the DSP would create a compatible commercial, retail and residential mixed-use development which would be in character with the overall neighborhood. The DSP is considered to be compatible with the existing and potential land uses of the surrounding areas.
2. A stream is situated in the northeast portion of the Site and there may be steep slopes present on the Site. Portions of the existing woods would be removed. Comments from the Division of Land Development indicate that waivers may be required to be approved for impacts to environmental areas.
3. The development on the DSP would have an access point that has been recommended for approval with conditions by the State Highway Administration.
4. As noted above, the DSP would be considered as reasonably compatible with the Howard County General Plan because the Site is well positioned between residential and business areas.

E. Evaluation of Site Plan Design

If the Zoning Board should find that a Zoning Map Amendment is justified on the basis of mistake and/or change, the design of the development on the DSP has been determined to have the potential to comply with the technical requirements of the Subdivision Review Committee.

The Division of Comprehensive and Community Planning, however, commented that greater site connectivity and pedestrian opportunities and architectural focal points to help create a greater sense of place are objectives of the Route 40 Enhancement Study that should be fulfilled with the redevelopment plan. Goals identified in this study include improving the design of commercial centers, developing a sense of identity for the corridor, and improving pedestrian accessibility along the corridor and within areas of concentrated development. The lack of a pedestrian connectivity pattern is exemplified in the Forest Green Concept Sketch submitted with the proposal. This concept plan sheet entitled "Entry From Rt. 40" depicts a sidewalk along Route 40 while the DSP does not show pedestrian access along Route 40. The concept plan appears to depict site amenities such as sidewalks and gathering spaces which are not evident on the DSP. Considering that the Supplement to the Petition contains excerpts from the General Plan which discuss objectives for the Route 40 Redevelopment Corridor and maintains that the development of the site as part of the Forest Mills development will increase the vibrancy of the Route 40 corridor, site amenities should be especially enhanced for this project and may include increased landscaping and a plaza or gathering area.

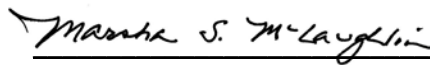
F. Evaluation of Zoning District

The proposed B-1 zoning would provide a logical transition between the adjoining R-20 and B-2 Districts.

V. RECOMMENDATION

APPROVAL

For the reasons noted above, the Department of Planning and Zoning recommends that the requested Zoning Map Amendment with site plan documentation to rezone the Property from R-20 to B-1 be **APPROVED**.



Marsha McLaughlin, Director

11/25/09

Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

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